In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 323

JOHN F. RAMEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The *per curiam* opinion of the court of appeals (Pet. App. 6–8; R. 28–30)[1] is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 25, 1964 (R. 31). The petition for a writ of certiorari was filed on July 24, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] "R." designates the joint appendix in the court of appeals and the appeal papers attached thereto, which are on file with the Clerk of this Court. Also being filed with the Clerk are additional portions of the transcript which were before the court of appeals.

743-068—64——1

QUESTION PRESENTED

Whether oral statements made by petitioner at police headquarters shortly after his arrest were properly admitted into evidence.

STATEMENT

After a jury trial in the United States District Court for the District of Columbia, petitioner was convicted on a three-count indictment charging assault with a dangerous weapon (a knife) in violation of 22 D.C. Code § 502 (R. 28–29). He was sentenced under the Youth Corrections Act, 18 U.S.C. 5010(b). In a *per curiam* opinion, the court of appeals unanimously affirmed (R. 28–30; Pet. App. 6–8).

The only issue raised by the petition relates to the admissibility into evidence of oral statements made by petitioner to police officers shortly after his arrest. The evidence relating to this matter may be summarized as follows:

At approximately 10:35 p.m. on the evening of November 25, 1961, petitioner was arrested on the assault charge and taken to police headquarters, arriving there at about 10:40 p.m. He was booked at about "10:43 or 10:45" p.m. and turned over by the arresting officer to Detectives Swart and Sayre (R. 1–2). Detective Swart, who was present while petitioner was being booked, testified that after the booking procedures, which lasted about five minutes, petitioner was taken to the "detectives' room" (R. 2–3). At this time, Swart had a five-minute conversation with petitioner. The officer made no promises or threats nor did he employ coercion; petitioner did not hesitate in

answering the detective's inquiries (R. 3–4). Petitioner admitted that he had "cut the three boys at the Capital Park Apartments," and said that he had done so because "he was mad and afraid." He further admitted that the boys had not "threatened him in any way" (R. 4). When shown the knife found on his person, petitioner stated that it was the instrument he had used (*ibid*). Petitioner also made a statement to Detective Sayre, who included the substance of the statement in his police report (R. 5, 15–16). Petitioner told Detective Sayre that the assault had been initiated out of fear, but that none of the young men had threatened him in any way (R. 16–17; 29).

Petitioner's sole objection to the admission into evidence of his oral statements was that they were obtained in violation of the rule of *Mallory* v. *United States*, 354 U.S. 449, in that there was an unnecessary delay from the time petitioner made the statments until his arraignment.[2] The court overruled this objection (R. 5–14).

The typed police report, prepared by Detective Sayre, essentially embodying the same matters contained in petitioner's oral statements, was introduced into evidence by the defense and used in its examination of Detective Sayre.

---

[2] Petitioner was arrested on Saturday evening and was brought before a Commissioner for preliminary hearing the following Monday morning, which was the next session of court (R. 5).

ARGUMENT

Petitioner contends only that statements made by him to the detectives following his arrest were inadmissible under the rule of *Mallory* v. *United States*, 354 U.S. 449. If this argument is based on the claim made at trial that there was an unreasonable delay between the time of petitioner's confession and his arraignment, it is without merit since any delay in arraignment subsequent to the confession does not affect its admissibility. See *United States* v. *Mitchell*, 322 U.S. 65, 69–70; *Bailey* v. *United States*, 328 F. 2d 542, 545–547 (C.A.D.C.), certiorari denied, 377 U.S. 972; *Jackson* v. *United States*, 313 F. 2d 572, 575 (C.A.D.C.). If the claim is that the statements were inadmissible because they were the product of a period of unreasonable delay, it is unsupported by the record. The court below, which has been acutely sensitive to the requirements of the *Mallory* rule,[3] found that there had been no unreasonable delay, and that the statements "were forthcoming within a few minutes after * * * [petitioner's] arrest and promptly in response to routine inquiries as to what had happened" (Pet. App. 7).

Petitioner first argued on appeal that the statements were inadmissible because they were not preceded by warnings to petitioner that any statement he made could be used against him and that he had a right to confer with counsel. The record is silent as to whether petitioner was so informed by the police

[3] See, *e.g.*, *Muschette* v. *United States*, 322 F. 2d 989, reversed on other grounds, June 22, 1964, No. 729 Misc.; *Spriggs* v. *United States*, C.A. No. 17962, decided June 19, 1964.

officers, petitioner's trial counsel never having raised the issue and no evidence having been presented on this matter. When defense counsel has failed in this manner to "ventilate the issue," it is not available as a ground for reversal in an appellate court. See *Hawkins* v. *United States,* 288 F. 2d 122, 125–126 (C.A.D.C.) (Bazelon, J., concurring).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.
HERBERT J. MILLER, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys.

AUGUST 1964.

U.S. GOVERNMENT PRINTING OFFICE: 1964